

trading activity is exclusively under the direct control of individual traders, and wherein *the host system does not in any way, directly or indirectly, engage on its own in any trading activity.*

A. Fundamental distinctions between the present invention and Lancaster

The principal reference cited by the Examiner in his office action, Lancaster et al published application WO 97/30407 (hereinafter "Lancaster"), is directed, like the present application, to providing a means to trade around the clock through electronic means. To address this objective Lancaster discloses and claims a trading system that deliberately mimics the current operations of a conventional *clearing house*, a firm whose principal function is to provide clients with a set of procedures and guarantees whereby traders may trade contracts "on margin."

The Lancaster trading system is accordingly characterized by four fundamental operating principles, central to the operation of the Lancaster system, that are designed chiefly to protect electronic *clearing houses* against the risks of financial losses:

1. All trading is conducted "on margin," using "gearing ratios" set by the clearing house. On placing a trading order, each trader is required to deposit, in an "assigned trading account," an amount which is typically a small fraction of the market price of the traded commodity, and only that deposited amount is put "at risk" by the trader.
2. The two parties to each contract each deposit an identical amount to support their trade. Each "contract" of trade entered into under the Lancaster system has two identified parties, and upon being matched to create a trading contract, *each of these two parties is required to deposit the identical amount, based upon the gearing ration referenced above, into their respective "assigned trading account".*
3. Upon each move in the market price of an object of trade, each party to a contract regarding that object of trade is immediately credited or debited with an incremental gain or loss. That is, each price move "tick" automatically results in transfers of funds, to the "assigned trading account" of each contract-holder favored by the price move tick and from the "assigned trading account" of their respective counter-parties.

4. The clearing house is a mandatory and active participant in the trading activity, and it intervenes directly and constantly into the trading process. Its market activities include the following (among many others):
- (a) The clearing house sets the "gearing ratio" that will determine the funds to be deposited by each trader upon making each trade;
 - (b) The clearing house sets the market price at which an object of trade to be traded on the exchange will initially be priced;
 - (c) The clearing house reserves an option on both sides of each contract, and it exercises these option rights on virtually every tick of the market, to close out (and then attempt to resell and/or novate) the contracts of any participant whose assigned trading funds will be exhausted by any adverse "tick" in the market price.

The present invention, on the other hand, introduces an entirely new trading paradigm, which eliminates the traditional *clearing house* margin trading functions. *The invention employs none of the four central characteristics of the Lancaster system.* In the trading system of the present invention:

1. All trading activity is under the direct and complete control of individual traders, and the host system does not engage on its own in any trading activity whatsoever.
(The system of the present invention can readily be modified to include features whereby a host system component acts on orders from traders to engage in trading activity as specified by the trader, but any such features are purely optional and not in any sense an integral element of the system.)
2. The present invention introduces a novel bid-matching paradigm, for use in trading units of a novel trading instrument having a fixed settlement price and two sides that represent mutually exclusive final outcomes:
 - (a) traders submit bids specifying a side of said trading instrument and specifying a price *always less* than its fixed settlement price (i.e., between (but never) zero and the settlement price);
 - (b) matches are declared (automatically) when bids are received that specify opposing sides of the trading instrument and that total in the aggregate at least the fixed settlement price of the trading instrument (plus trading fees); and

- (c) upon the conclusion of the trading event, resulting in the determination of a prevailing final outcome and thus a "prevailing side" (as between the two mutually exclusive outcomes), each holder of trading instrument units specifying the prevailing side is credited with the *entire* value of the fixed settlement price.
- (d) During the course of each trading event, holders of trading instruments, specifying either side, may trade such trading instruments at will, in direct person-to-person trading wholly free of interference by the system.
3. Traders deposit different amounts, equal to their bids, upon placing trading orders. The bids and deposits of traders specifying opposing sides of a trading instrument therefore represent, at any moment, the market's comparative valuing of the two sides of a contract having an uncertain two-option outcome, as complementary fractions of the settlement price.
4. The system of the present invention enables all trades to be fully funded at all times, to the full value of the settlement price of the interest being traded. Because the sum of the (generally different) amounts deposited by opposing parties to every matched trade always equal the settlement price (plus trading fees), sufficient funds are always on hand to meet any obligation to any trader.
5. The present system eliminates any need for a clearing house to guaranty (and interfere with) any trader's contracts, and therefore it also eliminates any need for the many irksome procedures employed in the prior art to protect clearing houses against losses resulting from the trading activities of their customers.
6. No incremental gains or losses are ever credited to any party. Traders realize gains, or incur losses, only upon closing a position in whole or in part, or at the termination of the trading event.

The fundamental differences in the operating principles of the Lancaster system and the system of the present invention result in equally fundamental differences in the dynamics of operation of the two systems, and in the results for traders. In particular, the operations of the system of the present invention are far superior to those of Lancaster both in the effectiveness of their dynamics and in their substantive results for traders: the system of the present invention empowers individual traders to buy and sell contracts *directly with each other*, trader to trader, without any interference whatever by or from any outside forces. In the Lancaster system, it is

the trading activities of an electronic clearing house that dominate and characterize the operations of the system. In the Lancaster system the clearing house constantly intervenes in trading activity, notably to close out, novate or assign the live contracts of traders, whenever it appears that the making of incremental payments upon each price movement, and/or market price moves to either end of a bracket determined by the gearing ratio, has depleted the "assigned trading account of either or both parties to a given contract.

As exemplified by Examples 11 and 12 presented by Lancaster, passive traders holding either the long or short position in an otherwise actively traded commodity may well find themselves both losing money and both having the bulk of their contracts involuntarily terminated by the clearing house. These nefarious consequences cannot occur under the trading system of the present invention, in the operation of which the host system never disturbs traders' contracts and never interferes in the trading activities of traders, and in which no gain or loss is realized except only upon a trader's actions in closing a position in whole or in part, or at the conclusion of a trading event or the expiration date of a trading contract.

The system of Lancaster cannot manage an actively traded, volatile market, and will close out the contracts of all traders upon any shift in market price that approaches or exceeds the "gearing ratio". In dramatic contrast the system of the present invention is completely resilient to any and all shifts in the market value of the object of trade, however rapid.

Lancaster's selection of *margin trading, and of credits/debits to all parties on each price move*, as fundamental operating premises of his trading system mandate the use of procedures to protect the clearing house against trading losses: the clearing house quickly runs out of cash (a) as the crediting of an incremental gain to all parties "favored" on any price move steadily eliminates the available funds, and/or (b) as the price of the traded object fluctuates to and past either end of a bracket defined by the "gearing" ration that the clearing house has established. To meet this constant need to protect the clearing house Lancaster has designed a veritable menagerie of protective measures, virtually all of which call for the clearing house to become an hyperactive participant in the trading activity, closing contracts right and left, attempting to "novate" the contracts of closed-out parties, and acting as a trader on its own account on either side of the contracts. As examples 11 and 12 set out in Lancaster vividly demonstrate, the general result, as the market price of a trading object fluctuates in active trading (especially to and beyond the trading range established by the gearing ration), is that virtually all traders have the number of their contracts drastically and involuntarily slashed.

It is noteworthy, however, that even if Lancaster had designed his system to require full funding of each trade, in the sense of having each party to each trade deposit 50%, or even 100%, of the then market price on the system of the object of trade, the Lancaster system would still be inexorably fated to run out of cash as the result of ordinary price moves, and thus would still require substantially the same protective procedures to protect the clearing house against loss. Thus a price rise of 110% would exhaust the 100% deposit of the disfavored party, requiring the clearing house to close the contract for lack of funds. Also, Lancaster's design of his system to credit incremental gains will invariably act to erode over time whatever funds have been deposited by the parties to any one contract, whether or not major price moves occur.

The present invention employs a novel trading paradigm which is not disclosed or suggested in Lancaster (alone or in combination with any known reference). A key to the system of the present invention, not disclosed in the prior art, is a pricing mechanism that maintains the market price of any contract, at all times prior to its termination, bounded between (but excluding) zero and the fixed settlement price of the trading instrument. Within these boundaries the market price of each trading instrument is set entirely by the trading activity of system subscribers. The system is 100% resilient against any possible price moves, regardless of their rapidity, and it provides means to insure that the fixed settlement price of each trading instrument may be *always fully funded*, for the benefit of the prevailing party at the expiration of the trading event. *Because the system of the present invention cannot lose money, regardless of the range, direction, or rapidity of price moves, or the extent of trades, the present invention eliminates any need for a clearing house, and accordingly the host system never participates in trading activity for any reason.*

B. Lancaster may not be combined with Midorikawa to support a rejection of claims drawn to the present invention

Applicants respectfully traverse the Examiner's combination of teachings from *Lancaster* and *Midorikawa* to reject any claims here presented. Neither *Lancaster* nor *Midorikawa* even remotely contemplates, let alone discloses or suggests, a trading system like that of the present invention, which with elegant simplicity enables individuals to trade directly on a person to person basis, free of any intervention by any broker or clearing house, and with complete security that all trades are fully funded at all times. Consequently the Examiner's combination of Lancaster with judicious interpretations of selected features of Midorikawa, in order to support rejection of claims presented in the instant application, reflects the application of hindsight to

reconstruct the system of the present invention where no such combinations are suggested or in fact supported by the cited references.

Lancaster, as earlier stated, is a **margin trading** system in which a central clearing house engages in ubiquitous trading activity, closing contracts right and left regardless of traders' real wishes. *Midorikawa* is a credit line management system, which discloses means for transactions between one defined class of clients, the "order side" clients, and a second and separate class of clients, the "hit side" clients, to be supported by means for drawing down credit lines established (separately) for these two classes of clients. Mechanically there is no way to combine the elements of *Lancaster* (which employs a single database for all trader accounts) and of *Midorikawa* (which employs entirely separate databases for "order side" and "hit side" clients) to achieve any visible objective. The Examiner's attempt to make such combinations, in order to support 103 rejections of claims presented in the instant application, improperly employs hindsight to effect reconstructions and combinations of disparate elements that are nowhere suggested in the cited references.

Furthermore, and as set forth below in a claim-by-claim review of the Examiner's 103 rejections, specific assertions by the Examiner that particular elements of the present invention are taught or disclosed by *Lancaster* and/or by *Midorikawa* are in many instances incorrect.

C. The 102 rejections

Claims 1-3 and 9 have been rejected under 35 U.S.C. §102(b) as being anticipated by *Lancaster* published application WO 97/30407 (hereinafter "*Lancaster*").

Applicant has amended claim 1, adding the term "trader-controlled" in the opening phrase of the claim preamble, "A trader-controlled trading system", to further define the trading system of the present invention as a trading system wherein all trading activity is conducted solely by and under the direct control of subscribing traders, and no trading activity that interferes with trader-initiated trades is engaged in by any entity associated with the host system, such as the "clearing house" of *Lancaster*, acting on its own account and for its own interests.

In contrast, *Lancaster* discloses a margin-trading system, in which a "clearing house" that engages in active trading is an integral element of the trading system, and in which the active trading activities of the "clearing house" are central to the operation of the system. It is a

fundamental objective of the present invention to provide a trading system in which traders may trade with one another totally free from any interference by any broker, market maker, odd-lot facilitator or clearing house. Lancaster does not and cannot meet this fundamental objective and therefore it does not anticipate or render obvious the present invention.

Regarding the 102 rejection of claims 2, 3 and 9, all of said claims are dependent on claim 1. Where applicant has amended claim 1 to distinguish from Lancaster, said claims 2, 3 and 9 have also been patentably distinguished from the Lancaster reference.

D. The 103 rejections

Introduction

Turning to rejections under 35 U.S.C. §103, the Examiner has rejected claims 4-8 and 10-34 under §103 as unpatentable over *Lancaster* in view of Midorikawa et al U.S. Patent No. 5,832,462.

Substantially all of the 103 rejections made by the Examiner rely on a determination that the principal reference *Lancaster* discloses, as recited in claim 1 of the present invention as initially presented, "a trading system that employs a trading instrument having a fixed face value and two opposing sides that represent mutually exclusive outcomes regarding the subject matter of said trading instrument". Applicants have now amended the preamble of each of claims 1, 11, 14 and 17 to recite a "trader-controlled" trading system and thereby distinguish more clearly from *Lancaster*; with these amendments applicants have also further distinguished the present invention from any possible combination of teachings from the *Lancaster* and *Midorikawa* references. Furthermore, and as previously noted, applicants respectfully traverse the Examiner's combination of teachings from *Lancaster* and *Midorikawa* to reject any claims here presented.

Claim-by-claim review of the 103 rejections

The Examiner has rejected claims 4-8 and 10-34 under §103 as being unpatentable over *Lancaster* in view of *Midorikawa*.

With respect to claims 4-8 and 10, all of said claims are dependent on parent claim 1, the preamble of which applicant has now amended to recite "a trader-controlled trading system" and thereby more clearly distinguish from *Lancaster*. Applicants believes that with this amendment claim 1 is in condition for allowance. Accordingly applicants believes that dependent claims 4-8 and 10 are also patentable and in condition for allowance, and the withdrawal of their rejection is respectfully requested.

Applicants note, regarding the 103 rejection of claim 5, the Examiner's statement that Lancaster does not, but Midorikawa allegedly does, disclose "means for declaring a matched trade upon receipt by the host computer of a first bid specifying a side of a trading instrument and a price per unit and the subsequent receipt by the host computer of a second bid specifying the opposing side of the contract and a price per unit, where the sum of the prices per unit specified in the first bid and the second bid are in the aggregate at least equal to the face value of the trading instrument." Having stated that "Midorikawa discloses such step" the Examiner further states that "one would have been motivated to tuse such a step in order to extend the [Lancaster] system's application." (Page 5).

Both of these contentions are incorrect: First, Midorikawa nowhere discloses the use of a bid matching condition based upon a sum of opposing bids; second, there is no suggestion to be found in either Lancaster or Midorikawa to warrant any motivation to modify Lancaster to include the use of such a bid-matching condition.

Midorikawa Fig. 8 is cited in support of this rejection. Said Fig. 8 makes no reference whatever to summing the bids of two opposing sides to a proposed contract. The discussion of Fig. 8 in the specification, at col. 7, lines 27-32, likewise makes no reference whatever to summing individual bids submitted on *opposing sides* of any contract, let alone to comparing the resultant sum to the face value of that contract. No such discussion appears in Midorikawa because the Midorikawa system has no need for any such summing of opposing bids. Neither does the Lancaster system, in which no summing of opposing bids is disclosed or suggested. To contend that Midorikawa provides motivation for upending fundamental premises of Lancaster "to extend the application of the system" is simply not warranted.

Lastly, and to further distinguish claim 5 from Lancaster and/or Midorikawa, applicants have further amended claim 5 to recite that a matched trade is to be declared upon "receipt by the host computer of a first bid specifying a side of [a] the trading instrument and a price per unit that is less than said fixed face value and the subsequent receipt by the host computer of a second bid specifying the opposing side of said [contract] trading instrument and a price per unit that is also less than said fixed face value, where the sum of the prices per unit specified in said first bid and said second bid are in the aggregate at least equal to the face value of said trading instrument." Neither Lancaster nor Midorikawa discloses or suggests a trading system wherein a matched trade is declared when bids are submitted on opposing sides of a trading instrument having a fixed face value, each of said opposing bids proposing a price less than said fixed face

value. Accordingly claim 5 as now amended clearly and patentably distinguishes from the cited references alone or in combination, and the rejection of said claim 5 should be withdrawn.

With respect to claim 6 the Examiner states (at page 6) that Lancaster does not disclose a host computer having "means for automatically reserving or withdrawing from the the account of any the [sic] user the value of any bid submitted by the user to the host computer," as recited in claim 6, but that Midorikawa "discloses such step (Col. 2, lines 54-65). The Examiner states further that it would have been obvious to a person of skill to apply such means to the Lancaster system, and that one would have been motivated to do so to extend the system's application.

This is incorrect. Lancaster is expressly a margin trading system, and it consistently teaches away from requiring traders to deposit an amount equal to their bids. Furthermore it is not apparent how doing so would "extend the system's application." In particular it would not provide the Lancaster system with fundamental attributes of the present invention, such as the guarantee of full funding regardless of any trading eventuality. In the system of the present invention the range of values that can be taken by the market price of each side of the trading instrument is bounded between zero and a fixed settlement price; accordingly the settlement price can always be funded by deposits that in the aggregate equal that settlement price, where no disbursements are made from said deposits on account of incremental changes in value during the life of the contract. In the Lancaster system, there is no upper bound to the value the market price can take, and disbursements are made on each price tick: as a result deposits equal to 100% of a bid, or even 300% of a bid, still won't guarantee that funds will be available to pay incremental gains as they occur, and a clearing house empowered to close contracts would still be required.

Furthermore applicants have now amended claim 6 to depend from claim 5, rather than (as initially presented) from claim 2. Where claim 5 (as amended) is believed now to be in condition for allowance, claim 6 (as now amended to depend from claim 5) and also claim 7 and claim 8 (which depend from claim 6) are therefore also believed to be in condition for allowance.

Turning to independent claim 11, the Examiner states at page 7 that Lancaster does not disclose, as recited in claim 11, "means for declaring a matched trade when a first bid submitted on one of the sides specifies a price that, added to the price specified in a second bid submitted on the opposing side, at least equals the face value, and means for determining that one of the two sides is the prevailing side." The Examiner then asserts, however, that Midorikawa "discloses such steps", citing Col. 2, lines 66-67 and Col. 3, lines 1-20, and, further, that it would

have been obvious to a person of skill to apply such subject matter to the system of Lancaster, in order to "facilitate communication between the system's users."

On the following grounds, these contentions are incorrect and the Examiner is respectfully urged to withdraw his rejection of claim 11 as now amended to more clearly distinguish claim 11 from the art cited by the Examiner. Element (b) of claim 11 has been amended as follows:

(b) means for traders to submit bids to purchase, at a price per trading instrument unit always less than said fixed face value, at least one unit of either side of said trading instrument,

A central aspect of the embodiment of the present invention claimed in claim 11 is the use of a trading instrument having a fixed face value (for example, arbitrarily fixed at \$10.00) and two opposing sides that represent mutually exclusive terminal outcomes (for example, that team Red will win a basketball game against team Blue), whereby matches are made and trades are established when one trader proffers a price less than said fixed price on one side, say \$6.00 on Red, and another trader proffers a price also less than said fixed price on the opposing side, says \$4.00 on Blue, that in the aggregate total at least the fixed price of the contract. The presence of means to determine a prevailing side then enables the making of a payment of the entire fixed value of the trading instrument to the holder of a contract on the prevailing side.

Lancaster does not disclose these claim elements, and neither does Midorikawa. The Examiner states, in effect, that Midorikawa discloses means for declaring a match when the sum of the opposing bids, each less than the fixed face value of a trading instrument, totals at least the fixed face value of a trading instrument, and that it further discloses "means for determining that one of the two sides of the trading instrument is the prevailing side." The text from Midorikawa cited in support of the Examiner's assertion is as follows, in its entirety:

The electronic dealing system 1 shown in FIGS. 3A and 3B is provided with a market information management unit 20 for managing the orders placed by order side customers, a matching unit 21 for executing matching processing for *investigating if there is a match between an order placed by an order side customer and a request for a hit placed by a hit side customer under limiting conditions consistent with their credit lines*, a management unit 22 for managing the present (i.e., current) values of the credit lines, which are reduced each time a transaction is approved, starting from the initial values of the credit lines, a setting unit 23 for setting the initial values to the credit lines in the management unit 22 each time a prescribed time arrives, and an initial value management region 24 for managing the initial values of the credit lines.

In addition to this construction, the electronic dealing system 1 shown in FIG. 3A may be provided, for example, with a first changing unit 25 for changing the initial

values of the credit lines managed by the initial value management region 24 through interaction with a terminal 2 (FIG. 2), for example, and a second changing unit 26 for changing the present values of the credit lines managed by the management unit 22.

The quoted text does not support the Examiner's interpretation of Midorikawa's teachings and it does not support the rejection of claim 11 as now amended. Nowhere is there any reference to summing opposing bids, each at a price per unit less than the face value of an object of trade, to determine the existence of a match, and nowhere is there any reference to the determination of a "prevailing side" between two opposing sides. Accordingly applicants respectfully request that the Examiner withdraw his 103 rejection of claim 11 as now amended.

Claims 12 through 16 all depend from claim 11, which applicants believe is now in condition for allowance. Accordingly said dependent claims should also be allowable and applicants request that their rejection be withdrawn.

With respect specifically to claim 12, the Examiner has stated that "Midorikawa . . . discloses wherein the face value is payable to the holder of each trading instrument unit specifying the prevailing side (Col. 3, lines 39-52)". The cited text does not support the Examiner's contention:

In the electronic dealing system 1 of the present invention, whose basic constitution is illustrated in FIG. 2, the setting unit 13 groups a plurality of customers in a home group through interaction with the terminal 2, for example, and sets a common credit line for the customers as a whole in the home group as an initial value of the credit line, i.e., a credit line for the home group, set between this group and another single customer not belonging to this home group. After the setting processing, the registration unit 14 registers as the initial value of the credit line a common credit line which the setting unit 13 has set at an entry position in the management unit 12 designated by the identifiers of the customers in the same group set by the setting unit 13.

Nothing in the quoted language refers in any way to the existence of a prevailing side, let alone to payment of the face value of an object of trade to a side that has been determined to be a "prevailing side." For this additional reason, the Examiner is respectfully requested to withdraw his rejection of claim 13.

With respect to method claim 14, the Examiner (at page 9) refers to his earlier rejection of comparable apparatus claim 5. Claim 14 has now been amended (like parent claim 1 of claim 5) by the addition of the limitations "a trader-controlled trading" method, to more clearly distinguish the present invention from Lancaster, and for that reason alone should now be in

condition for allowance. Regarding the Examiner's application to claim 14 of the grounds for rejection he earlier applied to claim 5, applicants' response thereto is equally applicable here

Midorikawa Fig. 8 is cited in support of this rejection. Said Fig. 8 makes no reference whatever to summing the bids of two opposing sides to a proposed contract. The discussion of Fig. 8 in the specification, at col. 7, lines 27-32, likewise makes no reference whatever to summing the bids of opposing sides and comparing the resultant sum to the face value of any contract. No such discussion appears in Midorikawa because the Midorikawa system has no need for any such summing of opposing bids. Neither does the Lancaster system, in which no summing of opposing bids is disclosed or suggested. To contend that Midorikawa provides motivation for upending fundamental premises of Lancaster "to extend the application of the system" is simply not warranted.

Contrary to the Examiner's contention, neither Lancaster nor Midorikawa discloses or in any way suggests a system comprising means to declare a matched trade by summing two opposing bids, each submitted "at prices per trading instrument unit less than said face value [of the trading instrument]", and determining that said sum matches or exceeds the face value of the trading instrument.

For these reasons applicants respectfully request that the rejection of claim 14 be withdrawn.

Claims 15 and 16 depend from independent claim 14, as amended, which applicants believe has been put in condition for allowance. Accordingly said claims 15 and 16 also should now be in condition for allowance, and applicants request that their rejection be withdrawn.

Concerning dependent claim 15, which adds to method claim 15 the additional step "of determining that a side of the trading instrument is the prevailing side", the Examiner states at page 9 that "Midorikawa also discloses the step of determining that a side of the trading instrument is the prevailing side (Col. 3, lines 14-20)." This is simply incorrect: the Midorikawa reference nowhere even alludes to the concept of a "prevailing side", in any sense. In the operation of the present invention as claimed in claim 15, each trading event concludes with one of two sides of each trading instrument being determined to be the "prevailing side". No such determination occurs either in the system of Lancaster or in the system of Midorikawa. For this additional and independent reason, the rejection of claim 15 should be withdrawn.

Claim 16 depends from preceding claim 15, itself dependent from claim 14, and adds the step "of paying said face value to holders of each trading instrument unit that specifies said prevailing side." At page 10 of the Office Action the Examiner has rejected claim 16 under 103 stating that "Midorikawa also discloses the step of paying the face value to holders of each trading instrument unit that specifies the prevailing side (Col. 3, lines 39-52)" and therefore that

it would have been obvious to persons of skill when the invention was made effectively to modify Lancaster "to pay the face value to holders of each trading instrument that specifies the prevailing side, there allegedly being motivation to do so "in order to facilitate the system's transactions."

As stated above in response to the rejection of claim 15, neither Lancaster nor Midorikawa disclose a trading method whereby one of two opposing sides to a trading instrument is determined to be a "prevailing side." Furthermore, neither Lancaster nor Midorikawa disclose or in any way suggest a system comprising a step where the face value of a trading instrument is paid in whole to that one of two "sides" of a trading instrument that has been determined to be "prevailing." The Examiner's suggestion that there would be motivation to provide the Lancaster system with such a feature, "in order to facilitate the system's transactions", is completely at odds with fundamental premises of the Lancaster system.

In the system of Lancaster, the funds needed to pay anyone the face value of the trading instrument are never available. Instead, the two "sides" to each trading instrument are respectively credited, upon each price move "tick" in that side's favor, with a small gain corresponding to the change in market price. There is in the Lancaster system no overall "prevailing side" to each trading instrument, as there is in the system of the present invention. There is no way that Lancaster could be modified to provide for payment, to any party, of the full face value of the trading instruments, as doing so would destroy the Lancaster system's ability to perform the functions that are its stated objectives.

In the system disclosed in Midorikawa, credit lines are drawn down on each side of each consummated transaction in amounts effectively agreed upon by opposing trading parties upon making their bids: *neither side is a "prevailing side" who demonstrably receives greater value from any transaction than does the opposing side as the result of a determination, through the operation of the trading system, of a "prevailing side."*

For these additional reasons, applicants request that the rejection of claim 16 be withdrawn.

With respect to claim 17, claim 17 has now been amended as follows:
The preamble of claim 17 has been amended to recite: "A trader-controlled trading method . . ."
Within element (c) of claim 17, the ending phrase has been amended to recite: "where said first bid and said second bid are always each less than said face value and the sum of said first bid and said second bid at least equals said face value."

Applicants believe that claim 17 as amended has been placed in condition for allowance, and applicants accordingly request that the rejection of claim 17 be withdrawn. The addition to the preamble of claim 17 of the limitation "trader-controlled" trading method is intended to distinguish the present invention from the system disclosed in Lancaster, in which the electronic clearing house is in effective control of all trading activities and is a necessary, ubiquitous and active participant in trading activities. The addition in element (c) of claim 17 of the phrase "where said first bid and said second bid are always each less than said face value" further distinguishes the present invention from the system disclosed in Lancaster, and also distinguishes the present invention from the system disclosed in Midorikawa. In both Lancaster and Midorikawa it is essential to the operation of the trading systems that at least some traders will at some point submit bids equal to and greater the face value of the trading instrument. In the system of the present invention all submitted bids are for amounts less than the face value of the trading instrument.

The Examiner, in his 103 rejection of claim 17 (and 27) as initially presented, states *inter alia* (at page 11) that Mikorikawa discloses the step whereby "the host computer declaring a matched trade upon receiving a first bid specifying one side of the trading instrument and a second bid specifying the opposing side of the instrument, where the sum of the prices per unit specified in the first bid and the second bid at least equals the face value (Col. 2, lines 45-53)." Applicants respectfully traverse this rejection. Midorikawa in the text cited by the Examiner discloses no summing of bids submitted by opposing sides in order to declare a matched trade "where the sum of the prices per unit specified in the first bid and the second bid at least equals the face value." That text reads as follows:

[The electronic dealing system 1 of the present invention shown in FIG. 2 is provide with . . .] a management means unit 122 for managing the present values of credit lines, which are reduced each time a transaction is established, starting from the initial values of the credit lines, a setting means unit 13 for setting the initial values of the credit lines through interaction with a terminal 2, for example, and a registration means unit 14 for registering the initial values of the credit lines set by the setting means unit 13 in the management means unit 12.

Nowhere in the quoted text, or elsewhere in the Midorikawa disclosure is there any reference to summing the bids submitted by opposing sides for the purpose of determining whether the resulting sum at least equals the face value of a trading object or instrument. Accordingly applicants request that the rejection of claim 17 based on an alleged disclosure of this step in Midorikawa, and its combination with teachings from the Lancaster disclosure, be withdrawn.

Dependent claims 18 through 26 all depend from the above claim 17, as now amended, which applicants believe has now been placed in a condition for allowance. Accordingly applicants respectfully request that the rejection of said dependent claims also be withdrawn.

Applicants independently traverse the Examiner's rejection of claim 18 (which claim adds to claim 17 the limitation that "said trading instrument concerns an event having a termination point pursuant to pre-established criteria whereupon a side of said trading instrument will determinably be the prevailing side and the opposing side will determinably be the losing side." At page 12 of his Office Action, the Examiner states that Midorikawa discloses this limitation, citing the following text from Midorikawa Col 2, lines 54-65 in support of this contention:

The management means 12 may be provided with a credit line management region 15 for managing the initial values and subsequent, present (i.e., current) values of credit lines set between one customer and another and an address management region 16 for managing addresses of the credit line management region 15 corresponding to the customers for whom credit lines have been set, using customer identifiers as retrieval keys. By this arrangement the initial values and the subsequent, present (i.e., current) values of the credit lines are sometimes managed corresponding to the customers for whom credit lines have been set, using the customer identifiers as retrieval keys.

Clearly the quoted text from the Midorikawa disclosure does not support the Examiner's contention. Midorikawa simply does not refer to "an event having a termination point pursuant to pre-established criteria whereupon a side of said trading instrument will determinably be the prevailing side and the opposing side will determinably be the losing side." Neither does Lancaster. Therefore the rejection of claim 18 on the grounds set forth by the Examiner should be withdrawn.

Dependent claims 19 through 23 all depend from claim 18 (itself depending from claim 17). Where applicants believe claim 18 has been placed in conditions for allowance, on the several grounds set forth above, said dependent claims 19 through 23 are therefore should also be in condition for allowance and their rejection should also be withdrawn.

Specifically with respect to dependent claim 21 (which comprises the additional step "upon the termination of said event, of paying the holders of trading instrument specifying the side determined to be the prevailing side an amount equal to said face value for each unit of such trading instruments"), the Examiner states (at page 13) that Lancaster discloses this step (at Page 7, lines 31-36 and page 8, lines 1-3). Lancaster discloses no such thing in the text cited by the Examiner:

A gearing system applies with the contract. In the books of accounts of the Contract Exchange clearing house all investors' assigned funds accounts are debited and credited automatically with every price movement of their contracts during the day, every day. The contract clearing house automatically monitors all positions with every price fluctuation. This is a simple task as the clearing house can calculate positions prior to price movements if necessary and can collate similar positions together. The clearing house acts in an automated way as set down in the Contract Exchange rules.

The Lancaster system at all times lacks the funds to pay anyone the face value of any trading instrument. Instead, in the operation of the Lancaster system an amount equal to an incremental gain is disbursed on each price move tick (which the Examiner may properly consider to constitute an "event having a termination point . . . whereupon a side . . . will determinably be the prevailing side and the opposing side will determinably be the losing side" as recited in parent claim 18 to claim 21). The method of Lancaster is fundamentally different from the method of the present invention as claimed in claim 21, wherein a payment of the entire face value of the trading instrument is made to a prevailing side.

Claim 27 has been cancelled.

Applicants respectfully traverse the Examiner's 103 rejection of claim 28 over Lancaster in view of Midorikawa. The Examiner acknowledges that Lancaster does not disclose recited elements (b) through (e) of claim 28 as presented, but he asserts that each of these recited claim elements is disclosed in Midorikawa, generally at Col. 3, lines 14-58. This contention is incorrect. In particular Midorikawa does not specifically disclose element (e) of claim 28, which recites the step of:

(e) placing the untransacted portion of said incoming bid order on the corresponding one of said list in a priority sequence (according to the corresponding one of said predetermined programs) if said incoming bid order cannot be completely matched against any bid order or orders on said complementary bid order list.

In the text of Midorikawa cited by the Examiner in support of his rejection, at Col. 3, lines 34-52, Midorikawa makes reference to providing "an initial value mode selection unit 29 for selecting a designation mode of the initial values of the credit lines through interaction with the terminal 2 (FIG. 2), for example (for example, a first mode from rewriting the initial value each time a prescribed time arrives and a second mode for subtracting the unsettled amount of the transactions from the initial value) . . . " The context of this statement concerns a system that "groups a plurality of customers in a home group through interaction with the terminal 2, for

example, and sets a common credit line for the customers as a whole in the home group as an initial value of the credit line, i.e., a credit line for the home group, set between this group and another single customer not belonging to this home group." (Col. 3, lines 42-47).

In context Midorikawa's reference to "subtracting the unsettled amount of the transactions from the initial value [of the credit line]" refers to a set of transactions involving a plurality of members of the "home group", and not, as in claim 28 of the present invention, severing a single trader's proffered bid into a transacted portion and an untransacted portion, and placing the untransacted portion of that single trader's single bid in a priority sequence for subsequent matching against potential opposing bids. Accordingly applicants respectfully contend that the combination of Midorikawa and Lancaster postulated by the Examiner may not be made, and request that the rejection of claim 28 be withdrawn.

With respect to claims 29 and 30, that depend from claim 28, applicants request that the rejection of said claims also be withdrawn, in view of their dependence on a claim believed to be in condition for allowance.

Claims 31-34 have been cancelled.

Conclusion

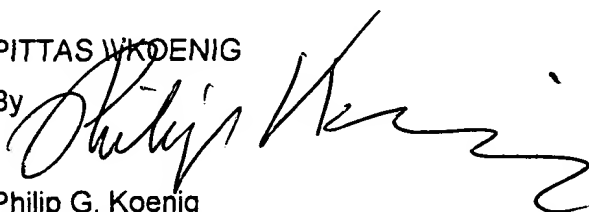
Applicants submit that claims 1-26 and 28-30 are allowable as amended, and Applicants therefore respectfully request notice of allowance. Should the Examiner believe that issues continue to exist but that the prosecution of this application might be expedited by a telephone interview, it would be greatly appreciated if the Examiner would contact the undersigned (at 781-721-6800), so that such issues may be expeditiously resolved. The Examiner may place such a call collect.

Respectfully submitted,

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PITTAS W KOENIG

By


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